UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES NEW YORK BRANCH OFFICE

S.K. PLASTICS CORP.

and Case No. 29-CA-29832

LOCAL 132, NEW YORK NEW JERSEY REGIONAL JOINT BOARD, WORKERS UNITED, SEIU

David Pollack, Esq., Counsel for the General Counsel.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on June 29, 2010 in Brooklyn, New York. The Complaint herein, which issued on December 30, 2009¹, and was based upon an unfair labor practice charge that was filed on September 22 by Local 132. New York New Jersey Regional Joint Board, Workers United, SEIU, herein called the Union, alleges that S.K. Plastics Corp., herein called the Respondent, during contract negotiations insisted, as a condition of reaching a collective bargaining agreement, that the Union agree to waive Respondent's debt to the Health & Welfare Fund, in violation of Section 8(a)(1)(5) of the Act. The Complaint further alleges that the Respondent has deducted Union dues from the earnings of the unit employees, but has failed to remit these dues to the Union, in violation of Section 8(a)(1) of the Act. Respondent filed an Answer to the Complaint dated January 25. 2010. On March 3, 2010, the Regional Director approved a Settlement Agreement that was executed by the parties resolving the allegations contained in the Complaint. The Settlement Agreement provides, inter alia, that the Respondent would pay seven named employees approximately \$700, fifty percent within seven days of the approval of the Settlement Agreement, and the balance to be paid within five weeks of the approval of the Settlement Agreement. The Settlement Agreement also provides for the posting of a notice and the reissuance of the Complaint and a waiver of any answer thereto and the right to raise any defenses to allegations of the Complaint, in the event of the Respondent's non-compliance with the terms of the Settlement Agreement.

By letter to the Respondent dated March 31, 2010, Elias Feuer, Supervisory Attorney for Region 29, wrote that, to date, the Respondent had not complied with the terms of the agreement in that it had not issued the checks to the named individuals and had not established that it posted the required Notice to Employees. The letter concluded:

You are advised that if we do not receive the above requested items on or before Friday, April 9, 2010, it will be a sufficient basis for the revocation of the Agreement, and the reinstatement of the Complaint and Notice of Hearing previously issued, and the filing of a Motion for Summary Judgment with the Board.

Having received no response to this letter, Feuer again wrote to the Respondent on April 29,

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2009.

2010, saying that he was "...making a final attempt to secure compliance in this matter..." He directed the Respondent to return the certification of the Notice posting and to pay the employees the amount specified, concluding:

You are advised that if we do not receive the above requested items on or before Friday, May 7, 2010, I will recommend that the Agreement be revoked, the Complaint and Notice of Hearing previously issued be reinstated, and that a Motion for Summary Judgment be filed with the Board.

Receiving no response from the Respondent, on May 18, 2010 the Region issued an Order Revoking Settlement and Re-Issuance of Complaint and Notice of Hearing repeating the allegations contained in the December 30 Complaint and alleging that the Respondent had breached the terms of the Settlement Agreement executed by the parties on March 3, 2010. No Answer was received and, by letter and fax to the Respondent dated June 2, 2010, the regional office stated: "Unless an Answer is received by the close of business on June 9, 2010, the region will seek a default judgment from the Board on the allegations in the Order." No Answer was filed and the Respondent did not appear at the hearing herein. Counsel for the General Counsel, at the hearing, moved for default judgment, which motion I granted. I therefore make the following findings of fact and conclusions of law:

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- 1. The charge in this proceeding was filed by the Union on September 22, 2009 and a copy was served by regular mail on Respondent on September 23, 2009.
- 2. At all material times Respondent, a domestic corporation, with its principal office and place of business located at 1040 Metropolitan Avenue, Brooklyn, New York, herein called the Brooklyn facility, has been engaged in the manufacture of pool covers and related materials.
 - 3. During the past year Respondent, in the course and conduct of its business operations referred to above in paragraph 2, sold and shipped from its Brooklyn facility goods and materials valued in excess of \$50,000 directly to points outside the State of New York.
 - 4. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
 - 5. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.
 - 6(a). The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Employer except office clerical employees, temporary workers, guards and supervisory employees with the authority to hire and fire or effectively recommend same.

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6(b). All all material times, the Union has been the delegated exclusive collectivebargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was between the Union and Respondent, and was effective from December 25, 2005, through December 24, 2008.

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7. On or about August 24, 2009, Respondent and the Union commenced negotiations for a collective bargaining agreement to succeed the agreement described above in paragraph 6(b).

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8. On or about August 24 and September 23, Respondent insisted, as a condition of reaching any collective bargaining agreement, that the Union agree to waive Respondent's debt to the Health & Welfare Fund.

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9. The conduct described above in paragraph 8 is not a mandatory subject for the purposes of collective bargaining.

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10(a). Since six months before the filing and service of the charge in this case, Respondent has deducted Union dues from the earnings of the employees in the Unit.

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10(b). Since six months before the filing and service of the charge in this case, Respondent has failed to remit to the Union the dues deducted from the earnings of employees in the Unit.

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11(a). On March 3, 2010 the Regional Director approved a bi-lateral Informal Settlement Agreement resolving all of the allegations set forth above in paragraphs 1 through 10.

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11(b). The bi-lateral settlement agreement provided, *inter alia*, that Respondent make whole employees Antonl Carrior-Chino, Pedro Cruz, Manuel A. Flores, Manuel Gomez, Jose Ochoo, Hipolito Salas, and Roldan Rodriguez for dues deducted from their wages, as described above in paragraphs 10(a) and 10(b), by payment to them of the amounts set forth below, within the time constraints set forth below:

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11(c). The bi-lateral settlement agreement provided, *inter alia*, that Respondent post a Notice to Employees.

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12. Respondent has breached the bi-lateral settlement agreement by failing to make payments to the employees named in paragraph 11(b).

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13. Respondent has breached the bi-lateral settlement agreement by failing to post the Notice to Employees referred to in paragraph 11(c).

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14. On March 31, 2010, Region 29 Supervisory Attorney Elias Feuer wrote to Respondent advising it that it was in default of the terms of the bi-lateral settlement agreement, and requesting that it cure the default as soon as possible.

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15. On April 29, 2010, Region 29 Supervisory Attorney Feuer wrote to Respondent advising it that it as in default of the terms of the bi-lateral settlement agreement, and requesting that it cure the default as soon as possible, but by no later than May 7, 2010.

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16. The bi-lateral informal settlement agreement, referred to above in paragraph 11, provides, *inter alia*, that in the event the Respondent fails to cure any default thereof, it waives its right to file an Answer to allegations made by General Counsel in a re-issued Complaint, and to raise any defenses thereto, except whether Respondent defaulted upon the terms of the bi-lateral informal settlement agreement and/or if it received notice to cure said default.

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17. As the Respondent has failed to comply with the terms of the bi-lateral settlement

agreement as approved on March 3, 2010, or cure its default of the terms of the bi-lateral settlement agreement within seven days, the bi-lateral informal settlement agreement is hereby revoked. I therefore find that by the conduct set forth above in paragraphs 8 and 9, the Respondent failed and refused to bargain in good faith with the Union and therefore violated Section 8(a)(1) and (5) of the Act, and by the conduct described in paragraph 10, the Respondent interfered with, restrained and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act and therefore violated Section 8(a)(1) of the Act.

18. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. In this regard, Respondent, within ten days from the date of this Decision, shall pay to the following individuals the amount opposite their names:

20 Antonl Carrior-Chino-\$164.05 Jose Ochoo-\$39.25 Pedro Cruz-\$132.85 Hipolito Salas-\$101.65 Manuel A. Flores-\$101.65 25 Roldan \$31.20 Manuel Gomez-\$132.85

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

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ORDER²

The Respondent, S.K. Plastics Corp., its officers, agents, successors and assigns, shall

Cease and desist from

(a) Insisting in its collective bargaining negotiations with the Union that, as a condition of reaching a collective bargaining agreement, that the Union agree to waive its debt to the Union's Health and Welfare Fund.

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- (b) Failing and refusing to remit to the Union the Union dues that it deducted from its employees' wages.
- (c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed them by Section 7 of the Act.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- 2. Take the following affirmative action designed to effectuate the policies of the Act
- (a) Within 10 days from the date of this Decision make whole the employees named above in the Remedy section by paying them the amount set opposite their names.
- (b) Within 10 days of the date of this Decision notify the Union, in writing, that it will no longer insist as a condition of reaching a collective bargaining agreement, that the Union agree to waive its debt to the Health and Welfare Fund.
- (c) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 22, 2009.
- (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 13, 2010.

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³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

WE WILL NOT insist, as a condition of reaching a contract with Local 132, New York New Jersey Regional Joint Board, Workers United, SEIU ("the Union"), that the Union agree to waive our debt to its Health & Welfare Fund;

WE WILL NOT fail to remit to the Union the dues that we deducted from our employees' wages;

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL notify the Union, in writing, that we will no longer insist, as a condition of agreeing to a contract, that the Union waive our debt to its Health & Welfare Fund.

WE WILL reimburse the following employees in the amount set opposite their names for the Union dues that we deducted from their wages, but did not transmit to the Union:

Antonl Carrior-Ch	nino \$164.05	Manuel A. Flores	\$101.65
Jose Ochoo	\$39.25	Roldan Rodriguez	\$31.20
Pedro Cruz	\$132.85	Manuel Gomez	\$132.85
Hipolito Salas	\$101.65		

S.K. PLASTICS CORP. (Employer)

Dated	By	
	(Representative)	(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center (North), Jay Street and Myrtle Avenue, 5th Floor

Brooklyn, New York 11201-4201 Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.